



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDORET**

**SUCCESSION CAUSE NO. 287 OF 2007**

**IN THE MATTER OF ESTATE OF ANDREW KIBII LAGAT ALIAS KIBII CHEBET (DCSD),**

**THROUGH;**

**CLARA JEPCHIRICHIR LAGAT.....1<sup>ST</sup> PETITIONER/RESPONDENT**

**MARK KIPNGETICH BY..... 2<sup>ND</sup> PETITIONER/ RESPONDENT**

**VERSUS**

**FLORA JESEREM MURISHA.....1<sup>ST</sup> OBJECTOR/APPLICANT**

**ELIZABETH JEMAIYOY KIPTANUI.....2<sup>ND</sup> OBJECTOR/APPLICANT**

**CHERONO CHEMWENO.....3<sup>RD</sup> OBJECTOR/APPLICANT**

**RULING**

**1. FLORA JESEREM MURISHA, ELIZABETH JEMAIYOY KIPTANUI, and CATHERINE CHERONO CHEMWENO** being the objectors filed the application dated 6th March 2020 supported by the affidavit sworn by Elizabeth Jepkorir Lagat seeking orders that,

a) Spent.

b) The respondents be summoned to appear before this court to account for the income generated from the leased parcels of land known as **IRONG/KORKITONY/64**, income generated from a one storey building in **KARIOKOR** near **RACE COURSE, NAIROBI** (4 bedroomed house) and another one storey building in **PLAINSVIEW ESTATE (SOUTH B), NAIROBI**, proceeds of sale from **CHEMICHEMI FARM, PLOT NO 1555/579** in **TRANS NZOIA WEST, SABOTI** location, **MACHEWA**, measuring 96 acres. And also the amount of death gratuity of the deceased, paid by the Kenya Defence Forces.

c) The petitioners do surrender 10 acres of land which forms part **IRONG/KORKITONY/64**, for use by the second objector, Elizabeth Jepkorir and 5 acres to Angela Chebeigo Kosgey pending the hearing and determination of the succession cause.

d) The income generated from the aforementioned properties be deposited in a mutually agreed joint bank account in the names of the parties.

e) Cost of the application.

**2.** The basis of these prayers is that the 1<sup>st</sup> and 2<sup>nd</sup> applicants who are sisters to **ANDREW KIBII LAGAT** (deceased) while the 3<sup>rd</sup> applicant is his stepmother, lament that although they are dependants of the deceased, they were locked out by the petitioner as beneficiaries of the estate, and did not receive death gratuity paid out by the deceased's employer (Kenya Defence Forces, hereinafter referred to as KDF). They contend that the respondent received a sum of Kshs83,640/- as death gratuity, and continues to receive a sum of Kshs 6,970 per month from KDF for the last 37 years, and she ought to account for the same.

Further, that ever since the death of the decease, the respondent has been leasing out the parcel known as **IRONG/KORKITONY/64** at Kshs 10,000/- per acre for 30 acres for the last 20 years, thus totalling to Kshs 6million. That the deceased also left some buildings which the respondent sold, and she should account for the proceeds.

**3. ELIZABETH JEPKORIR LAGAT** states that at a family meeting, the respondent consented to her using 10 acres of the IRONG property, since the said **ELIZABETH** had contributed towards the education of the deceased's children, and that **Angela Chebeigo** (another

sister of the deceased) would use 5 acres of the same.

The respondent (Clara Jepchirchir Lagat), being the widow of the deceased, petitioned for a grant sometime around 1983 through Kenya Commercial Bank as the duly constituted attorney for Clara Jepchirchir Lagat, and a grant was issued in the name of Kenya Commercial Bank Limited, in 1983, but limited until the principal applied for a full grant. Subsequently, in the year 2007 Clara Lagat in her capacity as the principal, and one of the sons of the deceased **Mark Kipnetich Kibiy** (now deceased) petitioned for a full grant.

4. The applicants filed an objection claiming to have a beneficial interest in the estate of the deceased as they are sisters and step mother of the deceased Andrew Kibii Lagat. Their contention is that **Land Parcel No. IRONG/KORKITONY/64**, although registered in the name of the deceased, was held by the deceased in trust for the other family members. They also claim that the petitioners did not include all the beneficiaries of the deceased, and that there was also concealment of facts as to the initial owner of the parcel No. **IRONG/KORKITONY/64**.

5. In a replying affidavit sworn by the respondent, she urges the court to dismiss the application, terming it bad in law, and intended to delay the final determination of this cause. She describes the applicants as strangers to the estate, who are only bent on mischief, as it is only her and the deceased's children who are beneficiaries of the estate. She points out that pension for a deceased person is to be enjoyed only by the deceased's nuclear family, i.e. the spouse and the children, and she was entitled to receive gratuity from his employer without any other party's enjoyment.

6. As regards the **IRONG** parcel, the respondent maintains that the same is registered in the sole name of the deceased, and claims over other properties are simply introduced to frustrate the proceedings which are pending. She also explains that out of her own free moral conscience, she decided to give Elizabeth 5 acres, which she has been tilling, yet she is now pushing for more.

7. The court directed that parties file written submissions, but I only traced submissions by the respondent's counsel. The respondent's counsel refers to a copy of the green card showing all the entries in relation to the registration of the claimed parcel and submits that it defeats the logic of alleged concealment. It is pointed out that the petitioner has nothing to hide, and it is very clear that Andrew Kibii Lagat is the last person whose name has been entered in the green card, and there is no indication that he held the land in trust for anyone.

8. Counsel reiterates that the applicant's sole interest is to be a menace in the making the administration of the estate of the deceased, hoping to reap from where they did not sow and benefit from where they never put any effort, just because they are allegedly blood related to the deceased.

9. The respondent has identified the following as comprising issues for determination.

1. Whether the objectors herein are entitled to inherit from or administer the estate of the deceased.
2. Whether land parcel no. **IRONG/KORKITONY/64** is free property of the late Andrew Kibii Lagat.
3. Whether the petitioner herein is guilty of intermeddling with the deceased's property the objectors herein are entitled to inherit from or administer the estate of the deceased.

**10. Whether the objectors herein are entitled to inherit from or administer the estate of the deceased.**

The respondent makes reference to the provisions of **Section 29 (a) and 29(b) of the Law of Succession Act, cap 160 Laws of Kenya**, is very clear as to who can be listed dependants in an intestacy case. The Act provides thus:

**"For the purposes of this Part, "dependant" means;**

**a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;**

**b) such of the deceased's parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death..."**

11. Counsel makes emphasis that, for a person to rightfully claim interest in a deceased estate, they must demonstrate that they were being maintained by the deceased immediately prior to the deceased's death. It is submitted that the objectors have not demonstrated their dependency since they are not children of the deceased. That **the Law of Succession Act also provides under Section 66 (a)** that preference is given to the deceased spouse when it comes to cases of intestacy.

12. The respondent relies on the case of **in Re the Estate of Dorcas Wanjiku- (Deceased) [2014] eKLR**, which reiterated the provision of **section 66 of the Act in paragraphs 16 and 17** that:

***"By virtue of Section 66 of the Act, the surviving spouse should have priority over everybody else. He or she has prior right to the administration of the estate of their departed spouse. The rights of others rank after that ... Section 66 of the Act should be read together with rule 7(7) of the Probate and Administration Rules. 7(7). Where a person who is not a person in the order of preference set out in Section 66 of the Act seeks a grant of administration intestate he shall before the making of the***

**grant furnish to the court such information as the court may require to enable it to exercise its discretion under that Section and shall also satisfy the court that every person having a prior preference to a grant by virtue of the section has**

**a. renounced his right generally to apply for a grant; or**

**b. Consented in writing to the making of the grant to the applicant; or**

**c. Has been issued with a citation calling upon him either to renounce such right or to apply for a grant."**

This court is urged to find that in so far as the estate of the deceased is concerned, objectors are total strangers and have nothing to stop the issuance of this grant as prayed who should be stopped from abusing the court's process and trying to delay the administration of the estate of the deceased.

**13. Whether land parcel no. IRONG/KORKITONYI/64 is free property of the deceased Andrew Kibii Lagat.**

Drawing from the entries in the green card filed in court, which shows that the registered proprietor of the parcel no IRONG /KORKITONY/64 is Andrew Kibii Arap Lagat the respondents submit that if the objectors seriously contest the same should await the outcome of the suit herein, and the prayer by the objectors to be allowed to use part of the estate of the deceased, yet they are not even beneficiaries is out of order. This application is described as being misplaced in law.

**14. Whether the petitioner herein is guilty of intermeddling with the deceased's property**

The respondent's counsel refers to the definition given on intermeddling as provided under section 45 of the Law of succession Act that:

**45(1)** Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

That on 2nd June 1983, a grant was issued to Kenya Commercial Bank, being the attorney for the respondent, and the applicants ought to be informed that the respondent has been acting within the Law and that their issue of intermeddling is neither here nor there.

**15. Analysis and determination**

This is a matter that had proceeded to near conclusion, when the objectors filed the present application seeking temporary orders. I can only echo what the respondent's counsel has stated, that, these are mischievous tactics which only go to delay conclusion of the matter. What they seek is for this court to premature grant orders yet the basis of those claims forms part of what this court must determine in the main petition. Indeed, it is enough for the applicants to object to the issuance of grant and the best they can do is to await the outcome.

**16.** It is on account of this that I decline to even analyse the issues raise here as these ought to wait the final determination of this cause. The application is made in bad faith and in my view is an abuse of the court process. The same is dismissed with costs to the respondent.

**VIRTUALLY DELIVERED AND DATED THIS 28TH OF MAY 2021 AT ELDORET**

**H. A. OMONDI**

**JUDGE**